are not authority for the position of the court. In the first case there was some evidence that the jury, worn out, has "fixed up" a verdict; also, they had been allowed to separate and go out to a public resort. In the latter case the bailiff had taken the jury out for a view of the *locus*, unknown to counsel in the case. In *Renfroe* v. *State*, 13 Ga. App. 655, cited by the court, after the jury had been out eighteen hours the bailiff said that they should not make a mistrial, as the judge was conscientiously opposed to them. The court seems to lay down the rule that the plaintiff in error should show injury, unless misconduct of the jury is shown or it appears they have been unduly interfered with, when there is a presumption of injury; but this presumption may be affirmatively rebutted. A new trial was granted. It is submitted that the principal case goes so far beyond any necessity of preserving the purity of jury trial as actually to do injustice. As Dean Pound has said, "The individual gets so much fair play that the public gets very little." Compare with the principal case the case of *People* v. *Pyle*, 185 Pac. 1019 (Cal., 1919), in which a bystander had said, in the presence of jurors, to defendant's attorney, that he would "fix" the defendant, who had "beat" him out of some money. It was held that in the absence of a showing that the verdict had been influenced it was no abuse of discretion to deny a new trial, "unless we go out into the thin air of metaphysics for inspiration and wholly disregard the ample evidence, independently of the alleged statements, to sustain the verdict of the jury and arbitrarily hold that such alleged statements probably influenced the verdict, the defendant's contention can find no support." See *State* v. *Harper*, 101 N. C. 761, 9 Am St. Rep. 46; *State* v. *Burton*, 172 N. C. 939.

TRUSTS—RESULTING TRUST ON HUSBAND'S PURCHASE OF LAND AND CONVEYANCE TO WIFE NOT DESTROYED BY HER VERBAL AGREEMENT TO HOLD TITLE FOR HIS USE.—The defendant purchased land with his own funds and had it conveyed to his wife on her parol promise to hold the title for his use and make such conveyances as he should desire. Upon separation from her husband twenty years later the wife brought ejectment for the land. *Held*, the presumption of a gift to the wife being overcome by the evidence of her oral agreement, there is a resulting trust in favor of the husband. *Jackson* v. *Jackson* (Ga., 1920), 104 S. E. 236.

Since the so-called resulting trust is based upon an intention implied in law, it would seem illogical to decree a resulting trust in the face of an actual intention expressed in an oral agreement. An artificial presumption of intention is inconsistent with an actual intention. The trust being an oral one and unenforceable because of the Statute of Frauds, relief should be sought on the theory of a constructive trust. This is the view of Dean Ames in 20 HARV. L. REV. 549, and Professor Costigan in 27 HARV. L. REV. 437. It is noteworthy that the court in the instant case recognized the logic of this position, though it felt constrained to adhere to the prevailing view that the trust is still resulting if the oral agreement is not different from that which would be implied if the grantee were legally a stranger. *Long* v.

Mechem, 147 Ala. 405; *Barrows* v. *Bohan,* 41 Conn. 278; *Smithsonian Inst.* v. *Meech,* 169 U. S. 398. Other courts have discarded this view as unsound, at least to the extent of holding that an oral promise to the one paying the consideration takes the case out of the category of resulting trusts, and that, in the absence of fraud, no trust will be imposed. *Mullong* v. *Schneider,* 155 Ia. 12; *Chapman* v. *Chapman,* 114 Mich. 144; *Johnson* v. *Johnson,* 16 Minn. 512. This result, while logically correct so far as the principle underlying resulting trusts is concerned, seems to overlook the prevention of the unjust enrichment principle upon which a decree of constructive trust might properly be based. It is to be noted that, if the view contended for by Dean Ames and Professor Costigan is adopted to its full extent, the courts must recognize not only that the trust is not resulting but that the mere repudiation of the promise is sufficient fraud upon which to found a constructive trust. Otherwise, in many cases where relief is now granted on a resulting trust theory there could be no relief if the trust were regarded as constructive. This would be the result in states where actual fraud is required to raise a constructive trust. *Skahen* v. *Irving,* 206 Ill. 597; *Lancaster* v. *Springer,* 239 Ill. 472. It is not infrequently held that the mere repudiation of an oral agreement, made in good faith, is not fraud. *Teeney* v. *Howard,* 79 Cal. 575; *McClain* v. *McClain,* 57 Ia. 167; *Tagte* v. *Tagte,* 34 Minn. 272. Unless the courts are prepared to hold that fraudulent retention justifies a constructive trust, they are forced to deny relief except on a resulting trust theory. The additional step would seem to be warranted, however, not only because of the more effective justice which could be rendered but because it would place the cases upon an undeniably sound and logically correct basis. The simple admission in the instant case that the trust enforced there should logically be a constructive rather than a resulting trust is a step in the right direction.

VENDOR AND PURCHASER—RIGHTS OF PARTIES WHERE PREMISES ARE DAMAGED.—Plaintiff had contracted with defendant to sell him property with stores on it, conveyance to be made on a certain date. Defendant had paid a small part of the purchase price. Before the time for conveyance, without the fault of the vendor, the wall of the building containing four stores fell, damaging the property substantially. Cross suits in equity were instituted, for specific performance and for repayment of the part payment, respectively. *Held,* that the loss must fall on the vendor. *Libman* v. *Levenson, Levenson* v. *Libman* (Mass., 1920), 128 N. E. 13.

The prevailing rule in the United States is that the risk is on the vendee, since he is considered in equity as the real owner of the property. *Brewer* v. *Herbert,* 30 Md. 301; *Sewell* v. *Underhill,* 197 N. Y. 168, 8 MICH. L. REV. 515; *Neponsit Realty Co.* v. *Judge,* 176 N. Y. Supp. 133; see *Mandru* v. *Humphreys,* 98 S. E. 259. Unless the contract is unenforceable by the vendor at time of loss, as where he has not obtained title. *Amundson* v. *Severson,* 170 N. W. 633. A supporting argument is that since any increase of value belongs to the vendee, *Frick's Appeal,* 101 Pa. St. 485, the risk of loss should